

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

LEE YONGDUK, *pro se*,

Debtor.

Case No.13-55308

Chapter 7

Judge Thomas J. Tucker

**ORDER DENYING DEBTOR'S MOTION TO EXCUSE
CREDIT COUNSELING, AND DISMISSING CASE**

On August 12, 2013, Debtor filed a voluntary petition for relief under Chapter 7 commencing this case (Docket # 1); "Exhibit D - Individual Debtor's Statement of Compliance With Credit Counseling Requirement" (Docket # 7, "Exhibit D"); and a motion entitled "Motion To Credit Counseling Wa[i]ved" (Docket # 16, the "Motion"). On Exhibit D, Debtor checked the box before numbered Paragraph 4, which states that he was "not required to receive a credit counseling briefing because of . . . Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing, in person, by telephone or through the Internet)[.]" In the Motion, Debtor states, in relevant part, that he "does not speak, understand, read English at all." (Mot. at ¶ 1.)

For the following reasons, the Court must deny the Motion and dismiss this case.

11 U.S.C. § 109(h)(1) provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

11 U.S.C. § 109(h)(4) provides a limited exception to § 109(h)(1)'s requirement of obtaining a credit counseling briefing on or before the date of filing the bankruptcy petition. It provides:

(4) The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. **For**

the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and **“disability” means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).**

(Emphasis added).

The Motion must be denied because it does not demonstrate any of the grounds for such relief contained in 11 U.S.C. § 109(h)(4); no “disability” or “incapacity” is alleged, as those words are defined in this statute. And the Motion does not show that credit counseling in the Debtor's language was unavailable. The Court notes that the United States Trustee's website, at the following link, http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm, provides a list of approved credit counseling agencies who provide credit counseling in languages other than English, including the following Chinese languages: Chinese, Mandarin; Chinese, Min Nan/Taiwanese; and Chinese, Yue/Cantonese. The website provides a drop-down list of such agencies, and says the following:

Many approved credit counseling agencies provide counseling services in languages other than English. For a list of agencies and the languages that they offer, select the language from the drop down list below and click "Go". If you are looking for a language that is not found on the drop down list, please contact the Credit Counseling Unit at the Executive Office for U.S. Trustees at ust.cc.help@usdoj.gov.

For these reasons, the Motion must be denied. And Debtor must meet the requirement of 11 U.S.C. § 109(h)(1), that he obtain the required credit counseling briefing *on or before* that date of filing his bankruptcy petition, to be eligible to be a debtor in this case. Because the Debtor did not meet this requirement, he is not eligible to be a debtor in this case under 11 U.S.C. § 109(h)(1), and this case must be dismissed.

Accordingly,

IT IS ORDERED that:

1. The Motion (Docket # 16) is denied.
2. This bankruptcy case is dismissed.

Signed on September 09, 2013

/s/ Thomas J. Tucker

**Thomas J. Tucker
United States Bankruptcy Judge**